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35TH CONGRESS, 2d Session. | SENATE. | Ex. Doc. No. 29.

MESSAGE

OF THE

PRESIDENT OF THE UNITED STATES,

COMMUNICATING,

In compliance with a resolution of the Senate, the report of the special agent of the United States, recently sent to Vancouver's Island and British Columbia.

NUGENT

JANUARY 31, 1859.—Referred to the Committee on Foreign Relations.
FEBRUARY 17, 1859.—Ordered to be printed.

To the Senate of the United States:

In compliance with the resolution of the Senate of the 25th instant, I transmit a copy of the report of the special agent of the United States recently sent to Vancouver's Island and British Columbia.

JAMES BUCHANAN.

WASHINGTON, *January* 29, 1859.

WASHINGTON, *January* 8, 1859.

SIR: In accordance with your letter of instructions, dated August 2, 1858, I proceeded, without unnecessary loss of time, to Victoria, Vancouver's Island, where I arrived on the 20th of September, having been detained twelve days at San Francisco, awaiting the departure of a steamer. On my arrival, I found that a large number of those who had gone to the Frazer river mines, had left on their return to California, having become dissatisfied with the country and the prospect; and that, of those who remained, by far the greater number were merely waiting to realize sufficient to defray their expenses back to their homes. It was still likely, however, that a considerable number would remain, both on Vancouver's Island and throughout the mining region of Frazer river, during the winter, if not longer; and I addressed myself to the accomplishment, in regard to them, of the objects of the mission with which I had been honored by the President of the United States.

The chief purpose of the special agency entrusted to me I understood to be, to infuse among the citizens of the United States, temporarily resident in the vicinity of Frazer river, a spirit of subordination to the colonial authorities, and of respect for the laws of Great Britain,—and, at the same time, by such representations to the governor of

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Vancouver's Island as circumstances would suggest, to endeavor to obtain from that functionary the abrogation of the rigorous system of exactions theretofore pursued, and the adoption for the future of such a policy towards Americans as would not be inconsistent with their rights as the citizens of a friendly power, and would, furthermore, tend to promote among them feelings of kindness and good will towards the government and the subjects of Great Britain. Some such intervention by the United States was deemed necessary, for the reason that much exasperation was alleged to exist among those of our citizens, then making their way to the Frazer river mines, against the servants of the Hudson's Bay Company and the authorities of Vancouver's Island, in consequence of the onerous exactions to which they were said to have been subjected by those officials. The numerous complaints of such exactions that had already reached the government of the United States, as early as June last, were in that month brought to the notice of Lord Malmesbury by Mr. Dallas, our minister at London; and, from the declarations of his lordship in reply, of the favorable disposition of the British government, as well as from repeated assurances of Lord Napier, the British minister at Washington, to the same effect,—assurances of the sincerity of which no doubt was entertained,—the hope was indulged that the rigor of the exactions previously practiced would, upon proper representations of their injustice, be abated, and that the work of conciliation would be one of no difficult accomplishment.

In addition to these duties, my instructions contemplated that I should furnish your department with all needful and attainable information touching the newly discovered mines on Frazer river; the emigration of American citizens thereto; and other kindred subjects.

It is scarcely necessary to advert to the history of the Frazer river excitement; how, in April and May of last year, the people of California, and of Oregon and Washington Territories, were startled by rumors industriously circulated of fabulous gold discoveries on Frazer river; how, day after day, steamers and sailing vessels left the port of San Francisco for Victoria, crowded to excess: many of them carrying three times the number of passengers allowed by law; how thousands, who were then in prosperous circumstances in California, dazzled by the prospect of immediately acquiring immense wealth, abandoned their occupations, both professional and manual, and selling off their mining claims and other possessions at a great sacrifice, threw themselves into the mad crowd who were thronging with eager steps to the new gold fields. It is understood that twenty-three thousand men left the port of San Francisco for Frazer river, and that some eight thousand more went overland, from the northern counties of California, and from the Territories of Oregon and Washington, by way of the Dalles and Fort Kamloops.

Some estimate the number as much greater; but it is safe to assert that the emigration to Vancouver's Island and British Columbia during the gold excitement,—the bulk of it during the months of May, June, and July,—was not under thirty thousand, and may have reached thirty-three thousand.

The number remaining there at present probably does not exceed

three thousand. The causes which produced this general and rapid abandonment of the colonies, I shall presently endeavor to explain.

The first body of gold seekers found their way to Frazer river from Victoria in canoes, skiffs, and whale-boats, American steamers being at that time jealously excluded from the river. Numbers perished in these hazardous voyages; many were lost in the mazes of the archipelago that stretches from Discovery island to the edge of the Gulf of Georgia; and many more in attempting to cross that stormy and dangerous Gulf, dangerous even for strong and large steamers, from the peculiarity of its currents, and from other causes.

At length Mr. Douglas, governor of Vancouver's Island, and chief factor of the Hudson's Bay Company, was induced to permit, on certain conditions, and on the payment of a certain sum for each trip, the navigation of the river by American bottoms, reserving to himself the right to withdraw this permission whenever boats owned by British subjects could be provided for the transportation of passengers and freight. A number of steamers (the Sea Bird, the Surprise, the Umatilla, the Maria, the Enterprize, and others) immediately commenced running between Victoria and the different points on Frazer river, and by these means the emigrants were enabled to spread themselves over the gold regions on the river and its tributaries.

The failure of their quest has been already chronicled through the press. Some, it is true, without experience in mining operations, became disgusted, and left without giving the mines a fair trial; but the great majority of the emigrants were men who had gained a thorough knowledge of mining by years of experience in California, and whom no hardships or discomforts could deter from the prosecution of their purpose. These men have penetrated into every accessible portion of the gold fields, from the mouth of the river up to the Canoe country, down Thompson river, from Fort Kamloops to its mouth, and up Bridge river nearly to its source, and have prospected every spot where gold is supposed to exist.

It is true that gold has been found everywhere, but, for the most part, diffused in such small quantities as not to reward the labor of digging for it. Some idea may be formed of the unsatisfactory yield of the mines when it is considered that, notwithstanding the immense numbers of people precipitated upon Frazer river and the adjacent country, the entire yield from May till October, inclusive, did not much exceed half a million of dollars.

There are some five or six bars on the river, between Fort Hope and Fort Yale, (Santa Clara bar, Texas bar, Emory's bar, Hill's bar, and one or two others,) that yield well; and on Bridge river, and at the forks of Frazer and Thompson's rivers, good diggings have been found;—but in the whole region hitherto prospected, there are not eligible *placers* more than enough to give remunerative employment to about fifteen hundred miners.

What discoveries may be the result of future researches to the northward and eastward of the present gold region can be, for the present, only matter of vague speculation. Hitherto, no gold-bearing quartz ledge of any extent has been found, and but little coarse gold. The bulk of that washed out is exceedingly fine dust. Some considerable

portion is of the description known as scale gold. The coarse gold specimens that I have seen were found not in the main river but in its small tributaries. From the extreme fineness of the gold, it requires elaborate care in amalgamation, and the use of a large quantity of quicksilver.

In consequence of the hazards of the trip from Victoria to the various points on the river attainable by steamboats—the navigation of Frazer river being extremely difficult and perilous—the prices of freight were enormous. From Victoria to Fort Hope, situated on Frazer river, one hundred miles above its mouth, forty dollars per ton, and, as the river became low, and the difficulty and danger increased, fifty dollars per ton was charged. From Fort Hope to Fort Yale, a distance of sixteen miles, which could only be performed in canoes, the freight was twenty dollars per ton, and above that point, the river not being navigable even for canoes for upwards of two hundred miles, provisions were packed generally on men's backs to the various diggings and prospecting grounds above.

The cost of provisions being so greatly enhanced by the labor and expense of transportation, the scant yield that in most cases rewarded the labors of the miner, even when he found gold, except in the most favored spots, scarcely sufficed for his support; while thousands spent all the means they had brought with them from California in prospecting without any remuneration whatever from the soil.

It will be seen, from the above, that the deposits of gold in the Frazer river region do not offer any weighty inducement for emigration from any portion of the United States.

The country is still less attractive in an agricultural point of view. Towards the coast its features are rocks, mountains, and a dense growth of fir trees. The few patches of open land one meets with are fitter for pasturage than the plow. Around Fort Kamloops, on Thompson's river, there is a prairie of some extent, and among the mountains are minute strips of valley land, but these latter are generally so difficult of access as to be almost unavailable for farming purposes. There is at present no land under cultivation by white men in the colony, except, perhaps, a small strip in the immediate vicinity of Fort Kamloops. Eastward, towards the base of the Rocky Mountains, the country is more open, but the climate is more unfavorable to agricultural pursuits than on the coast.

All accounts concur in representing the climate as anything but pleasant. Mr. Dunn, a standard authority on that country, writes of it as follows:

"The climate is very variable, and the transitions are, though periodically regular, remarkably sudden, if not violent. During the spring, which lasts from April till June, the weather and face of the country are delightful. In June there are almost incessant rains, drifted furiously along by a strong south wind. In July and August the heat is intense, and the ground, previously saturated with moisture, produces myriads of annoying flies and insects. This heat and sunshine are succeeded in September by fogs of such palpable darkness that, until noon, it is seldom possible to distinguish objects at a longer distance than one hundred yards. In November the winter sets in

speedily, freezing the lakes and smaller rivers. The cold, however, is not so intense as might be imagined in such a country and climate."

From a British army officer, formerly in the service of the Hudson's Bay Company, a gentleman of great intelligence, who has traversed nearly the whole region comprised within the newly established colony of British Columbia, I learn that there is no part of the country that will ever justify farming operations of any magnitude or extent. A large portion of the country is covered with water, and the rest is broken, cut up by rocky mountain ridges, and covered with a dense growth of fir and other timber, valueless as lumber, and unavailable for spars, for the reason that there is no possibility of conveying it to the coast.

The climate of the southeastern portion of Vancouver's Island is, for the most part, pleasant and healthful, except for a few of the winter months, during which boisterous winds and cold rains prevail; but the soil is illy adapted for the growth of cereals.

On the eight or ten square miles of open land in the neighborhood of Victoria, (the capital and only town of the colony,) there are some well kept farms, and in the patches of land on different parts of the coast, covered with Indian villages, the potato is cultivated with success, and good farms might be established; but with the exception of twenty or twenty-five square miles, which comprise all the clear land of the island, the remainder, two hundred and seventy miles in length, by from forty to fifty broad, is a mass of rocks and mountains and sterile clay, covered with a dense growth of valueless fir and tangled underbrush. Even that portion of woodland which is accessible to the axe would not justify the labor or expense of clearing, as the soil is too barren to yield anything like healthy or remunerative crops. Neither colony, therefore, offered any inducements to our citizens, disappointed in their mining operations, to settle down in the country with the view of tilling the soil.

But there is no doubt that, independently of the unpromising character of mining and agricultural operations, the early and rapid abandonment of the colonies by our citizens was induced, in some measure, by the petty exactions and other annoyances to which they were subjected by the servants of the Hudson's Bay Company and the officers of the colonial government.

Immediately on my arrival at Victoria I took means to inform myself as to the various causes of complaint alleged to exist, with a view to making such representations to Governor Douglas as might lead to their removal. I found in force a number of restrictions on mining and commercial pursuits, that operated as very irksome burdens, not simply by reason of the amounts exacted in the shape of taxes and other imposts, but because they were known to be exacted without authority of law. I shall proceed to notice these taxes in detail.

I have already said that, at an early stage of the Frazer river excitement, Governor Douglas gave permission for the navigation of the river by American steamers. From the following document, which is a copy of the original agreement, it would appear that the permission was given by him as factor of the Hudson's Bay Company, and not as governor of Vancouver's Island.

Copy of agreement.

The agents of the Hudson's Bay Company agree to license one or more steamers to ply from Victoria to and on Frazer river, on the following terms:

1. To receive and transport no goods to, on, or from Frazer river, except the goods of the Hudson's Bay Company, or such as they may permit to be shipped, and that for the transport of such goods that the freight do not exceed the following rates, viz:

Victoria to Langley, $10 per ton of 2,000 pounds or 40 feet measurement.
Langley to Fort Hope, $10 per ton of 2,000 pounds or 40 feet measurement.
Fort Hope to Fort Yale, $5 per ton of 2,000 pounds.
Return rates to be in the same scale.

2. To carry no passengers to or on Frazer river who have not taken out a mining license and permit from the government of Vancouver's Island, and one month's advance thereon.

3. To pay head money to the Hudson's Bay Company at the rate of two dollars for each passenger proceeding into Frazer, or taking passage from Langley upwards; a settlement to be made at the end of each trip, and an officer of the Hudson's Bay Company to be received on board without charge, to attend to such business if required by the Hudson's Bay Company.

4. That all vessels plying to or on the river be commanded and owned by British subjects.

5. That permits on said terms will be continued until expiry of the company's license to trade, in the month of May, 1859.

It will be perceived that this license is given by the agents of the Hudson's Bay Company to ply to and on Frazer river. By what right? Great Britain had the right to exclude our steamers from the waters of Frazer river; but if Great Britain did not choose to assert that right, how could the Hudson's Bay Company's servants claim to make conditions with our people, and charge toll for the privilege of entering? Admitting that they had the right of exclusive trade with the Indians, that did not give them control of the navigation of the river.

The conditions show, in a remarkably strong light, the grasping spirit that animated these officials. While other traders, British and American, were paying forty and fifty dollars per ton freight to Fort Hope, they exacted of the steamboat owners, as one of the conditions of opening the river, that they should carry the freight of the company for twenty dollars per ton, thus securing to themselves a large advantage over other merchants trading on the river.

Another very remarkable condition is that contained in *Article 2d:* Every person leaving Victoria for Frazer river, no matter what his business, was compelled to pay five dollars for a license to mine. Of course, under this regulation, the tax was extorted from a great

many of our citizens who never visited the river with any intention of mining.

I have seen a number of affidavits made by American citizens, setting forth the fact that they had visited Frazer river with no intention of mining; had never mined, and yet had been compelled to take out a mining license. The enforcement of the pre-payment, at Victoria, of this mining tax was abandoned a short time previous to my departure from the colony in November; but for a long time it was rigidly exacted, and a file of marines from the British vessel-of-war at the mouth of the river, was called into requisition, when it became necessary to enforce compliance on the part of a set of rebellious passengers.*

The third *article* requires the payment of two dollars head-money to the Hudson's Bay company, by every person entering the Frazer river country. I never could learn why this tax was collected, except that the Hudson's Bay company were the temporary possessors of the land, and they chose to exact this tribute from strangers on entering it.

The fourth *article* had neither truth nor substance, and was never intended to have any effect. The steamboat owners with whom the agreement was made were American citizens, the boats were American bottoms, sailing all the time under the American flag, and were so declared to be by their owners. The agents of the Hudson's Bay company said the article was a mere matter of form, and so it was inserted.

The following is a copy of the sufferance taken out by steamboats (for each trip) under the above agreement:

No. 580.—*General Sufferance.*

PORT VICTORIA, VANCOUVER'S ISLAND.

These are to certify to all whom it doth concern, that sufferance for this present voyage is granted on the conditions annexed to Captain Wright, to proceed on a voyage to Frazer river with steamer Enterprise and cargo, as per manifest, and that the said Captain Wright hath here entered and cleared his boat according to law.

Given under my hand at Victoria, V. I., this 18th day of October, 1858.

CHAS. A. ANGELO.
Deputy Collector.

* We would most earnestly impress on all persons about proceeding to the mines the necessity of obtaining licenses to mine from the proper officers at this port, as it will save them much time, annoyance, and may be serious trouble. Mr. Purser Welch, of the steamer Surprise, informs us that on his last trip up some fifty of the passengers, mostly Irishmen, refused to buy licenses, and expressed their determination to disregard the law in this respect. When off Point Roberts, just at the mouth of Frazer river, the Surprise was ordered alongside of H. B. Majesty's war steamer Satellite, boarded by her officers, and the fact of the contumacy of the refractory ascertained, when a file of marines was stationed on board and each passenger obliged to show his license under penalty of being put ashore. These prompt measures brought the rebellious to terms, and they were very glad to be allowed to purchase their licenses and proceed on their journey. We trust all persons arriving in the country will cheerfully obey the laws, as it is their duty, and because we are satisfied such obedience on their part will not only conduce to their own but the public good.—*Victoria (V. I.) Gazette of June* 30, 1858.

For each sufferance for a steamboat the sum of twelve dollars was exacted; and for each sufferance for a canoe, and every other description of boat entering the river, the sum of six dollars. It will be seen that by a remarkable confusion of jurisdictions, this sufferance tax is collected by the collector of the port of Victoria, an officer of the colonial government.

Thus far, the taxes imposed were—

For mining licenses, renewable at the end of each month.....	$5 00
Head-money from each person.....	2 00
Sufferance for a steamboat for each trip.....	12 00
Sufferance for each canoe and other boat.....	6 00

From canoes and other small boats passing up the river these imposts were collected in this wise: A hermaphrodite brig, named the Recovery, formerly owned by the Hudson's Bay Company, but afterwards put in commission and commanded by a lieutenant in the British navy, was stationed above the mouth of the river, and by her every boat passing up was hailed and ordered alongside.

If the passengers were so unfortunate as not to have means to pay mining license, head-money, and sufferance tax, their watches, pistols, knives, or other personal effects, were held in pledge for payment. In the absence of such personal effects, bags of flour, beans and coffee, hams, and other provisions were retained, and I have been assured that the deck of the brig was covered with those articles. It is but just to add that the officers immediately charged with the performance of this unpleasant service acted with all gentleness and humanity compatible with their orders, and that they endeavored, by every means in their power, to mitigate the rigor of these amercements.

In addition to the taxes above enumerated, a duty of ten per cent. *ad valorem* was imposed on all goods imported into the Frazer river country. It is almost unnecessary to say that this duty is wholly unauthorized by any existing law. Latterly it was pretended that it was levied for the behoof of the government, but the fact that it was collected by Mr. Finlayson, the financial agent of the Hudson's Bay Company, and not by the collector of the port, in addition to other circumstances, would lead to the belief that it was imposed by the company and for their own benefit. A letter is in existence from Mr. Finlayson to Mr. G. B. Wright, a contractor on the Harrison Lillooett trail, in which that gentleman promises that the goods imported by Mr. Wright up Frazer river, for the subsistence and clothing of his men, shall not be charged with this duty of ten per cent. as long as the license of the company shall continue in existence, but that after its expiration they will have no control in the matter. If the duty had not been imposed by the company, they certainly would have had no power to remit it in Mr. Wright's case. I shall be enabled in a few days to furnish a certified copy of this letter.

The following is a copy of the permit granted on the payment of the ten per cent. duty:

Permit.

Permission is hereby given to the northwest boundary commission of the United States to import the following packages of merchandise into Frazer river:

Marks.—George B. Roberts for Alexander C. Anderson, collector.
Contents.—Two thousand pounds barley.

ROBERT FINLAYSON,
Hudson's Bay Company.

To the revenue officer of Frazer river.

WILLIAM JEFFERY.

VICTORIA, *V. I.*, *September* 2, 1858.

Appended to this report is an affidavit of W. G. Eason, esq., now resident of Victoria, setting forth the payment of the duty on the above mentioned shipment of barley, and the refusal of Mr. Finlayson to receipt for the same. I likewise append a statement from the books of G. A. Reynolds & Co., merchants in Victoria, showing the amount of duties paid by that firm for a portion of the month of September, 1858.

Having informed myself concerning these various imposts, I waited upon Governor Douglas, in accordance with your instructions, and represented the various causes of complaint urged by our citizens. From the friendly intentions expressed by the British government, and the earnest disposition manifested by Lord Napier, the British minister, to co-operate with the government of the United States in such mutual offices of kindness and conciliation as would soften any feeling of exasperation that might have previously existed on the part of our people then on Frazer river and Vancouver's Island, against the local authorities,—and from what I was led to believe was the tenor of the instructions sent to Governor Douglas, simultaneously with my departure for Frazer river,—I apprehended no difficulty in inducing, on the part of that functionary, such an abatement of the rigor of the previous exactions as would allay the existing discontent, and would secure, for the future, harmony and good feeling. I regret to state that neither the instructions sent out, nor the earnest and courteous remonstrances which I deemed it my duty to address to his excellency, against the injustice, the impolicy and illegality of those exactions, were efficacious in producing more than the partial and inconsiderable modification I have before mentioned.

Governor Douglas, it is true, expressed the most friendly dispositions; but when pressed upon the subject of an abatement of the restrictions on mining and trading operations, remarked that there was nothing to prevent the Americans going elsewhere if they were dissatisfied with their treatment in the two colonies.

As an apology for the imposition of those onerous taxes he alleged the necessity of protecting the miners from the Indians. The only protection ever afforded against the Indians was by the appointment of a few special constables, a force not likely to be very efficient in an

Indian war. It is needless to say that the miners were compelled to protect themselves. At first the Indians were extremely hostile, from causes which I shall hereafter allude to. The miners, being in a strange land, and unwilling to embroil themselves, forbore, for a long time, from resisting the outrages perpetrated by the savages; but their forbearance the Indians regarded as cowardice; murders were committed; day after day the headless trunks of murdered miners came floating down the river. Bands of men were then organized who went out to the rancherias, met the Indians and chastised them. They then made treaties with them, and peace prevailed ever after. Individual instances of indiscretion and hot blood there may have been among the Americans in these troubles; but the unanimous testimony of all parties, both English and American, goes to show that those engaged in the difficulties exhibited exemplary forbearance before they struck a blow. Since that time there has been no necessity for the employment of special constables in Indian warfare.

But the grievances of which our citizens complained were not confined to the exactions practiced upon them. Numerous complaints reached me, of outrages committed by the subordinate officers of the Hudson's Bay Company, of dishonest dealings by the Commissioner of Public Lands, and of flagrant bias, according as their prejudices tended, on the part of the courts. The probity of the judges in pecuniary matters was unimpeached, but it was evident in many cases that their national prejudices carried them far out of the path of justice. Indeed, it is not too much to say that the courts, from the peculiarity of their constitution and the eccentricity of their action, were the merest travesties of judicial tribunals. Their pure unsophisticated ignorance of law was only equalled by the vehement bigotry that characterized their proceedings in many cases.

Where circumstances permitted, I directed the complaints of our citizens to be sworn to; in some cases, where the abuses occurred in remote parts of the interior, this mode of authentication was impracticable. At the request of the aggrieved parties I lay some of these cases before you, with this report, for the action of the government

Among them will be found one of a man who makes affidavit that he had declared his intentions to become a citizen of the United States; that he had built and stocked a store at Fort Langley; had hoisted the American flag on his house on the fourth of July in honor of his adopted country; was arrested some days afterwards for this offence, put in irons, brought down to Victoria, tried on a trumped-up charge of selling liquor to Indians, convicted, and thrown into prison, where he was kept for nearly two months, being fed on bread and water for a portion of the time. The affidavit and other papers are furnished herewith.

There will be found another case of an American citizen who was unmercifully beaten by an agent of the Hudson's Bay Company at Nanaimo, assisted by a number of half breeds, the agent being intoxicated at the time. The man beaten was Andrew McKenzie, the assaulting party was a man named Stewart, an agent of the Hudson's Bay Company and a colonial magistrate. McKenzie swore information against Stewart, but the court would not entertain the complaint

or issue process, for the reason that Nanaimo was out of its jurisdiction. The day previous, the same court had entertained a complaint against McKenzie, and had him arrested on a charge of uttering threatening language, the offence being alleged to have been committed at this very same place, Nanaimo, which next day the judge declared was out of his jurisdiction. On the first day, when the complaint was entertained, it was that of a British subject against an American. On the next day, when the complaint was not entertained, the case was of an American citizen against a British subject.

Another case will be found to be that of a ditch company at Santa Clara bar, on Frazer river, who had, with great labor and expense, constructed a ditch conveying water to their claim ; when, as they were about to reap the fruits of their enterprise, the commissioner of crown lands, who had been previously given an interest by another party, prevented them from using the water, and gave the privilege to the party with whom he himself was connected. Another, from a company on Texas bar, complains of a similar piece of knavery and oppression. Another memorial was received from Hills' bar, signed by one hundred miners, and complaining of similar outrages on the part of the same functionary.

Numberless complaints of this character poured in on me from day to day, more or less meritorious, but all of them proving a most grasping and avaricious spirit on the part of the petty authorities of the place, or else a studied determination to disgust the Americans with the country. These things continued up to the time of my departure ; and a few days before leaving Victoria, having been apprised of the existence of a very embittered feeling on the part of our citizens, engendered by these many acts of injustice, I deemed it my duty to issue an address to the Americans residing in Vancouver's Island and British Columbia, putting them in possession of the views of their government in regard to their rights and standing in those colonies; admonishing them to commit no violation of law, and to be obedient to the authorities ; at the same time admitting the numerous abuses that existed, but pledging to them the intervention of their own government for the redress of their grievances and the protection of their rights. This address I subjoin from the *Victoria Gazette*, of November 13, 1858.

To the citizens of the United States in Vancouver's Island and British Columbia:

Having received from citizens of the United States mining and trading on Frazer river and in its vicinity, a number of letters complaining of acts of injustice and oppression at the hands of the colonial authorities, and being on the eve of my departure to lay my report before the government at Washington, I take this public method of apprising American citizens sojourning in Vancouver's Island and British Columbia of the views of our government in regard to their rights and standing in these colonies.

I need scarcely say that the government of the United States expects of its own citizens abroad a decent conformity with local regulations,

obedience to the laws of the countries they visit, and a proper show of respect for the authorities by whom those laws are administered. This is exacted of strangers visiting the different States of the Union, who are amenable to punishment for a violation of the laws of those States or of the United States, as are American citizens for infraction of the laws of such foreign countries as they may enter in the pursuit of pleasure or of business. Such of our citizens, therefore, as have taken up their temporary residence in British Columbia or Vancouver's Island are subject, like all other residents, to the laws of the colonies of Great Britain, and are liable, like all others, to the penalties meted out by those laws to persons properly convicted of their violation.

I am aware that an elaborate attempt to impress these facts upon my fellow-citizens in these colonies would be superfluous. Their sobriety of deportment, their decent observance of all the proprieties of life in the midst of privations and annoyances of no common degree, and their obedience to the law under very trying provocations to its infringement—although they may not have gained for them such liberal treatment as was due to that forbearance and good conduct—have nevertheless commanded the respect of the strangers among whom they are cast, and cannot fail to be subjects of pride and gratulation to their own government.

Considering the circumstances attending the recent settlement of these colonies, it was scarcely to be expected that a well regulated government could be at once built up out of the chaotic elements suddenly thrown together in such confusion. Much was to be pardoned to the inexperience of an executive hitherto dealing for the most part with savages, and possibly unprepared by previous training for the more refined exigencies imposed by governmental relations with a white population. Much of the cause of complaints that have arisen was to some extent excusable, because due to the unlicensed rudeness of the subordinate officers of the Hudson's Bay Company and the colonial government, who, by reason of their long isolation from civilized society and their habitual intercourse with Indians, had unlearned most of the finer traits of humanity and were scarcely accountable for a grossness of conduct that had become to them a second nature; and, lastly, much was to be excused in the ignorance and want of tone of courts organized out of such crude and unfit materials as those, the only ones that were at hand on the sudden influx of the strangers. In some instances, no doubt, these courts have fallen short of even the limited expectations justified by the peculiar circumstances of their construction and the strange constituents of which they were composed. But it is not to be doubted that the British government will, without unnecessary delay, provide remedies for the evils and abuses arising from this condition of things—evils and abuses affecting not alone the prosperity of its own subjects, but the rights of citizens of a foreign and friendly power.

The forbearance, in the mean time, of the citizens of the United States, their quiet observance of the laws under any aggressions on their rights of which they may have to complain, will not alone have its reward in the consciousness of having done credit to their country, a country whose institutions are based upon that all-pervading love of

order, and that spirit of obedience to the law which distinguishes its citizens, but it will, moreover, entitle them to the active intervention of their own government for the redress of their grievances and for the protection of their rights. That the government of the United States, upon proper cause being shown, after recourse shall have been had in vain to the tribunals, against acts of oppression or injustice, will so intervene for the redress and protection of its citizens in British Columbia and Vancouver's Island, I am authorized and instructed to give them the most emphatic assurance. If wrong be done them, let them appeal to the courts. It is to be hoped they will obtain justice; but should those tribunals, unfortunately, be too impotent, too ignorant, or too corrupt to administer the law with impartiality and firmness, our citizens may reckon with certainty upon the prompt and efficient interference of their own government in their behalf. The best guarantee I can furnish them of the certainty of such interposition will be found in the subjoined declaration by the honorable Lewis Cass, Secretary of State of the United States, in a recent despatch to our minister in Nicaragua, enunciating clearly and vigorously the views of our government in respect to the rights of our citizens visiting foreign countries:

"The United States believe it to be their duty, and they mean to execute it, to watch over the persons and property of their citizens visiting foreign countries, and to intervene for their protection when such action is justified by existing circumstances and by the law of nations. Wherever her citizens may go through the habitable globe, when they encounter injustice they may appeal to the government of their country, and the appeal will be examined into, with a view to such action on their behalf as it may be proper to take. It is impossible to define in advance and with precision those cases in which the national power may be exerted for their relief, or to what extent relief shall be afforded. Circumstances as they arise must prescribe the rule of action. In countries where well defined and established laws are in operation, and where their administration is committed to able and independent judges, cases will rarely occur where such intervention will be necessary. But these elements of confidence and security are not everywhere found; and where that is unfortunately the case, the United States are called upon to be more vigilant in watching over their citizens, and to interpose efficiently for their protection when they are subjected to tortuous proceedings by the direct action of the government, or by its indisposition, or inability to discharge its duties."

It is unnecessary for me to make any further or more pointed application of this declaration, to the circumstances of American citizens in these colonies. Their own intelligence and prudence will enable them so to guard their conduct that they shall never forfeit that provident and fatherly care and protection which it promises, and which the government of the United States has both the ability and the will to exercise over all its children, in whatever part of the world they may be.

JOHN NUGENT,
Special Agent of the United States.

VICTORIA, VANCOUVER'S ISLAND, *Nov.* 13, 1858.

From what has gone before, it will not be denied that my remarks concerning the executive were founded in justice; as to the courts, their partiality was almost inconceivable. The animus with which they dealt out law to American citizens will be best understood from a letter appended to this report from Captain William Webster, now in this city, from which it will be seen that the chief justice of the colony of Vancouver's Island, Mr. Cameron, once so far forgot himself on one occasion as to say in open court that the only further punishment he thought should be inflicted on a person named Munro, convicted of perjury, who had been in prison for three months, was "to send him to the other side," (Washington Territory,) "where all rogues and villains should be sent, where they belonged, and should remain."

Among the Hudson's Bay Company's people, there are some gentlemen of high character and respectability. Mr. McKay, Mr. McTavish, Mr. McLean, and the agent at Fort Yale, whose name I forget, have exhibited marked courtesy and kindness towards Americans; but that my strictures upon the generality of the subordinate officers, to whom they were intended to apply, were not too severe will be admitted, when I state on the authority of Colonel Snowden, a citizen of Yuba county, in California, that he learned from several Indian chiefs, that they and their people were led to believe by the representations of the Hudson's Bay Company's servants, that the Americans were coming there to rob them of their cattle, of their food, and their squaws; and were advised by those same evil minded individuals to commence a war of extermination against our citizens; and furthermore, when I state that one of the guns captured from the hands of an Indian in October last, in one of Colonel Wright's Indian fights in Washington Territory, was a British musket of the date of 1857, which arm could not have found its way into the heart of our Indian territory, except through the emissaries of the Hudson's Bay Company; and that numbers of similar weapons were furnished to the Indians in the war against our troops not the slightest doubt is entertained. My information in regard to this fact is derived from a number of army officers, fresh from the battle-fields of Washington Territory, and personally cognizant of the matter; among them, Lieutenant Morgan, now stationed at Old Point Comfort, Lieutenant Tyler, I believe on leave, and within a few hours' reach of this place, and Captain Fletcher, on leave, and within telegraphic communication in Virginia. I will further state that there is evidence now in the Department of State, that after a disastrous battle fought in Washington Territory, during the last year, with the Spokanes and other Indians, the mules, horses, accoutrements, and other property of the United States which fell into the hands of the savages, were subsequently purchased from them by the agents of the Hudson's Bay Company, at Colville, and other places; that this property bore the marks and brands of the United States, and was known to the purchasers to have been plundered by the Indians, who were then in a state of rebellion against our government.

But that they did not confine themselves simply to receiving this stolen property, but absolutely supplied the Indians then in the field against our troops with ammunition and arms, is abundantly proved

by the testimony of army officers and others. Mr. John Owen, special Indian agent to the Flathead nation, Washington Territory, writes from Colville valley, on the 11th of July, 1858, as follows: (I quote from the report of the Secretary of the Interior, pages 618, 619, 620.)

"I arrived at Fort Colville in company with the Hudson's Bay Company's "brigade," on the 4th instant. I met at Colville the Cœur d'Alene chief, with some ten others of the same tribe. They came well mounted, on United States horses and mules; they are offering the mules for sale; some were bought by the Hudson's Bay Company. I told the gentleman in charge that I had no orders to stop it, but I did not think it right to furnish a market for stolen horses to the enemy."

* * * * * * * * * *

The Hudson's Bay Company's train, some two hundred head of horses, starts in a few days for Fort Hope, for the year's outfit. I think they are to bring some two thousand pounds of powder, with a proportionate quantity of ball. This, as a matter of course, will find its way into the hostile camp, or at least a large portion of it. The trade in ammunition might be stopped here, but as the gentleman in charge told me, we could not prevent the company from trading at Fort Forty-nine, which is another post, some thirty miles above Colville, on the right bank of the river and across the line."

Mr. Nesmith, superintendent of Indian affairs for Oregon and Washington Territories, to whose notice these facts were brought, writes to the special agent as follows. His letter, dated August 2, 1858, is to be found on pages 623, 624 of the report of the Secretary of the Interior.

"You are also requested to warn the officer in charge of the Hudson's Bay Company's post at Colville to desist from encouraging the Indians in stealing and marauding by purchasing from them the property captured or stolen from the government or citizens of the United States. You will also warn him against supplying the Indians with arms and ammunition, and communicate such acts of the kind as may come to your knowledge to the commanding officer of the column now approaching Colville. If the officers of the Hudson's Bay Company have knowingly become the recipients of stolen property, they are as guilty as the thief who stole it, which, together with their furnishing arms and ammunition to murder our people, should stamp them with infamy and cause their expulsion from American soil. It is hoped that the military will take steps to prevent a repetition of the outrages complained of."

The subjoined extract from a letter published in the Washington Union of October 31, 1858, from Doctor F. Perkins, of Oregon, will furnish further corroboration of the above charges:

"We remained at Fort Colville four days, and during that time thirty of the Cœur d'Alenes, with their head chief, were occupying a room in the fort. It will be remembered that these were the very ones who had defeated Colonel Steptoe; and they had with them a great number of American 'U. S. D.' mules and horses, which were sold to the chief of the Hudson's Bay Company at Fort Colville, for a small nominal price; he thus furnishing a market for stolen

goods, knowing them to be such, and that they had been taken at Colonel Steptoe's defeat. While we were at Fort Colville, every night the Indians would have their scalp dance, with their drums beating and war-whoops sounding. They did exactly as they pleased there, and would go into the kitchen and take smut off of the kettles to black their faces, which is a well known sign of hostility, indicating war to the knife In connexion with this subject, I will mention that the chief in charge at Fort Colville made the remark that if the United States government would not allow him to sell the Indians ammunition there, he would do it at Fort Forty-nine, which is three miles north of the line in the British possessions. *Heretofore there has been a very small amount of ammunition sent up from Fort Hope to Fort Colville for the winter; but this year it amounts to five hundred pounds of powder, nearly double the amount sent any previous year. Where the Indians have procured the ammunition with which they have fought Colonel Steptoe and the whites I do not pretend to say; but the fact that the Hudson's Bay Company have sent up so much more than usual this year, when they have no more call for it than before, is suggestive, and every man can draw his own deductions how this ammunition is to be used.*"

During my stay at Victoria, I was informed by the city marshal that a number of American citizens, Abraham Doran, William Johnson, William Harris, Wesley Cooper, Hulen Miles, and a negro named William Hurley, accused of various offences against the law, were about to be sent to trial without counsel. With the exception of the crown solicitor, (prosecuting attorney) the only members of the bar in the colony were American citizens, and these were not allowed to practice in the courts. I addressed a note to Governor Douglas, requesting him, under these circumstances, to interpose and cause counsel to be assigned to the accused from among the members of the American bar present, as the denial of counsel would operate as a great hardship and injustice. While the governor was holding the matter under advisement, the prisoners were tried, and with one exception, I believe, convicted. Afterwards I was informed by a note from his excellency that the application could not be granted, as the rules of the court forbade anybody practicing before it who was not a subject of the British crown. I regret to be obliged to characterize this as a mere subterfuge; that it was such will appear from the fact that the gentleman who then held the office of crown solicitor had been a member of the San Francisco bar for two years.

My correspondence with Governor Douglas on this question is furnished herewith.

From all these petty exactions and oppressions, these denials of justice and evidences of rampant prejudice, the conclusion is irresistible that whatever may have been the disposition of the British government, the feeling of the colonial officials and of the servants of the Hudson's Bay Company was aught but friendly towards our people. Their conduct was the less excusable, for the reason that the citizens of the United States visiting the colonies, comported themselves, throughout, with the most remarkable sobriety and decorum. All the colonial officials, including Governor Douglas, many times expressed

their surprise at the utter absence of any riotous or disorderly spirit among the miners. Even breaches of the peace of the most trivial character were of very rare occurrence; and, by everybody, the warmest praises were volunteered on the invariably quiet and orderly conduct that was observed. I would here remark that from the officers of the navy stationed near Victoria, and from the English gentlemen residing on Vancouver's Island, the Americans received nought but courtesy, kindness, and attention, from first to last; and by none have I heard the acts of the Hudson's Bay Company's servants more strongly censured than by subjects of Great Britain who have long resided on the island, and who are cognizant of the many abuses practiced by the company and its agents.

If the unkind and unfriendly acts upon which I have commented above, originated from jealousy of the advent of the Americans, or from fear of their eventually laying claim to the country, such jealousy and such apprehensions were wholly gratuitous. The Americans, it is true, were in sufficient force any time within the first six months to make successful any movement on their part towards the seizure of the colonies, which the fears of the authorities may have suggested as possible; but they entered the country with no marauding propensities; and furthermore, setting aside their indisposition to disturb the peaceful and friendly relations subsisting between their own country and Great Britain, the two colonies of Vancouver's Island and British Columbia really offered no inducements sufficient to render them worthy of even a temporary struggle. It is true that, in all probability, both will eventually cease to be under European control. Their ultimate accession to the American possessions on the Pacific coast is scarcely problematical—but in the mean time their intrinsic value either of locality, soil, climate, or productions, does not warrant any effort on the part of the American government or the American people towards their immediate acquisition.

As national possessions these colonies are to us but of little value. As I have already stated, Vancouver's Island—two hundred and seventy miles long and forty to fifty miles broad—contains, as far as I could learn, not more than some twenty or twenty-five miles of open land, and that not of the first quality. It has one town, Victoria, very prettily situated, filled with a highly intelligent and enterprising American population, and destined to be a place of some consequence. But the chief value of the island consists of the harbor of Esquimalt, which has capacity for a whole navy, and where vessels can lie perfectly secure from every wind that blows. Soke harbor is small, but very secure. Around the Cowichin villages is an extensive plain of good land, and the coal beds of Nanaimo are of good quality. So much for Vancouver's Island. Further explorations of the interior of the island may in time lead to the discovery of more valuable resources, although this is not probable. British Columbia has little to recommend it, except the forests of spars contiguous to the coast. The town of Fort Langley, thirty-five miles from the mouth of Frazer river, contains about eighty inhabitants. Fort Hope, some sixty-five miles above, contains about two hundred inhabitants, and as the head of winter navigation will probably be the depot of winter supplies for

the miners above. Fort Yale, sixteen miles above Fort Hope, is a bustling town of some five or six hundred inhabitants. It is just below the point where the river ceases to be navigable even for canoes, and is a place of considerable trade. The river, even below Fort Yale, is full of rapids, eddies, and under currents, and its navigation is at all times attended with difficulty and danger. I do not regard the gold fields of the colony hitherto prospected as valuable. Gold will be found over the whole country; but it is not extravagant to say that every ounce hitherto taken out of the Frazer river gold diggings has cost much more than an ounce to obtain it, not to mention the immense number of lives lost in the whirlpools of that treacherous stream. As national possessions, then, with the exception of the harbor of Esquimalt, these colonies are, as I have stated, to us comparatively valueless. It is true that the gold fields of Frazer river, although they will cease to command the attention of our citizens, will attract emigrants from England; besides, a number of Americans will continue in mercantile pursuits in Victoria, and the great bulk of the mining population still on Frazer river is likewise American. I respectfully suggest in this connexion the necessity of appointing a consul to reside at Victoria, whose functions should extend over Vancouver's Island and British Columbia. The interests of our citizens in that quarter imperatively demand the presence of a commercial agent.

The gold excitement caused a number of small towns to spring up in Washington Territory, contiguous to Frazer river and the mines. South of Point Roberts and close to the 49th parallel, a town called Semiamo was laid out, on the little bay of that name, from which there is a road leading to Fort Langley, a distance of seventeen miles; and on Bellingham bay the towns of Sehome and Whatcom were established. From this latter point a trail was cut, with great labor and expense, to intersect the trail to Fort Hope. A number of the immigrants entered the country overland, having come by way of the Dalles of the Columbia, thence taking the trail to Fort Kamloops, and from that point proceeding down Thompson's river to the forks. I herewith present a map of the Frazer river country, with manuscript lines and notes, which will give a better idea of it than any of those published. I could not learn that any overland expedition from the States or Territories east of the Rocky mountains had reached that country previous to my departure.

During my stay in Victoria, a number of American citizens who had come down from Frazer river, utterly destitute, without food, clothing, or any prospect of employment, or means to leave the country, applied to me for relief. Being without authority to contract for sending them to their homes, but not deeming it consistent either with humanity or proper national pride to suffer them to starve in a foreign land, as they would have done had they remained on the island, I appealed to the liberality of the agents of the Pacific Mail Steamship Company, and those gentlemen, with most praiseworthy readiness, acceded to my request to convey a number of the most destitute to San Francisco, agreeing, at the same time, to depend upon the justice of Congress for remuneration. A memorandum of the number of destitute citizens sent home by the company's steamers, as well as a copy

of my correspondence with the company's agents, at San Francisco, will be found appended to this report. In this connexion I take great pleasure in mentioning the humanity and kindness of Captain Lubbock, of the steamer "Maria," and Captain Wright, of the "Enterprise," to numbers of destitute citizens who had no means to pay for a passage from the mines down to Victoria. A large number were taken down by those gentlemen without charge. Through the liberality of Mr. Garrison a number were likewise taken down from Victoria to San Francisco on the steamship "Cortes."

I have already noticed the importance to the British government of the harbor of Esquimalt, on the southern end of Vancouver's Island. That its value is beginning to be appreciated by that power is already shown by the recent concentration at that point of quite a formidable squadron, and by the preparations said to be in progress for the construction of forts and other means of defence. Simultaneously with these movements and, indeed, somewhat in advance of them, the Russian government has been, for some time, engaged in fortifying the mouth of the Amoor. For several months past vessels from above have been arriving at that point laden with heavy guns, powder, shot and shell, and other materials for the construction of fortifications. It is evident that both powers look upon these points as very valuable as naval stations, and as possibly of great importance in other points of view in the event of a European war. In this connexion I beg to be permitted to call attention to the fact that on our whole coast, north of San Francisco, there is no harbor affording a safe anchorage for vessels during the southerly gales that prevail in the winter months.

By the construction of a breakwater at Cresent City a very safe and commodious harbor can be obtained, and, considering the very great importance of a safe port on the coast, the expense of the necessary works would be but trivial. I need not say that the want of a secure harbor on their coast is a great check to the prosperity of the people of the nothern counties of California, and that their numbers and the vast resources of that portion of the State entitle them to consideration at the hands of the general government. But among the islands stretching from the Strait of Rosario to the Canal de Haro there are a number of fine harbors, which, from their capacity and safety, leave us nothing to regret in having yielded Vancouver's Island. San Juan, an island fourteen or fifteen miles long by about seven miles wide, has two excellent harbors; and Lopez island, opposite and separated from it by a channel of not more than a mile wide, has another fine harbor, perfectly land-locked and safe at all times.

Both islands possess a fine soil, plenty of timber and of running water, abundance of pasture land, and the whole group is famous as a fishing station.

The present condition of this group of islands I shall briefly describe. They are claimed by Washington Territory as a part of Whatcom county; and, at the same time, are claimed by the officers of the British government as belonging to the possessions of that power on the Pacific. They have already been the subject of some controversy between the American and British commissioners for running the boundary line, and the matter has been referred by those gentlemen

to their respective governments. A few words will explain the nature of the dispute.

The treaty of June 15, 1846, stipulates as follows: Article 1. "From the point of the forty-ninth parallel of north latitude, where the boundary laid down in existing treaties and conventions between Great Britain and the United States terminates, the line of boundary between the territories of her Britannic Majesty and those of the United States shall be continued westward along the 49th parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island; and thence southerly through the middle of the said channel and of Fuca Straits to the Pacific ocean: Provided, however, that the navigation of the said channel and straits south of the forty-ninth parallel of north latitude remain free and open to both parties."

There are two channels between the continent and Vancouver's Island, both leading out into the Straits of Fuca. The Strait of Rosario, a narrow channel nearest to the mainland, and the Canal de Haro, which, besides being the beaten track, is much wider, has greater average depth of water, and is nearer to Vancouver's Island. It is claimed on the part of Great Britain that the Strait of Rosario, being the channel nearest to the mainland, is that contemplated by the treaty; but a very slight consideration of the circumstances under which the line was run, as well as of the wording of the article above quoted, will show that this position is wholly untenable. In the first place, the only reason why the boundary line was caused to deflect from the forty-ninth parallel before it reached the Pacific ocean was to avoid the southern end of Vancouver's Island, on which there was then a British settlement. The intendment of the article was merely to save to Great Britain the island of Vancouver, and consequently the nearest channel to Vancouver was undoubtedly that through the middle of which the treaty contemplated the line should run. Again, the islands bordering on the continent belong to the continent, unless otherwise stipulated; but there is no stipulation except as to Vancouver's Island; neither was there any reason existing at that time why there should be, as none of the islands in dispute were then occupied by subjects of Great Britain.

It does not, of course, become me in this place to enter into an elaborate argument of this question. My purpose is simply to call attention to the design apparently entertained by Great Britain, on the shallowest possible pretext, to deprive the people of the United States of possessions clearly theirs, and the importance of which to them, as well as to the government of the United States, can scarcely be over estimated.

I have the honor to be, with great respect, your obedient servant,

JOHN NUGENT,
Special Agent of the United States.

Hon. LEWIS CASS, *Secretary of State.*

VICTORIA, VANCOUVER'S ISLAND,
October 6, 1858.

The undersigned, special agent of the United States, has the honor to state to his excellency Governor Douglas that he is informed there

are six American citizens now in the prison of the fort awaiting trial on various charges; that these persons are denied the benefit of counsel, for the reason that no member of the American bar is permitted to practice in the courts of this colony, and the only British subject who practices in the courts is the crown solicitor, whose duty it is to prosecute the accused; that the prisoners are men ignorant of law, and therefore unable to present a proper defence; and that, from these causes, the accused may suffer great hardship and injustice.

In view of the above facts, the undersigned begs that his excellency Governor Douglas will so far interpose, to promote the ends of justice, as to cause counsel to be assigned to the accused from among the members of the American bar resident in Victoria; and further to provide that a similar course be observed in all such cases hereafter occurring, until the arrival of persons qualified, by reason of being British subjects, to practice in the courts.

The undersigned has the honor to be, &c., &c., &c., his excellency's obedient servant,

JOHN NUGENT,
Special Agent of the United States.

His Excellency Governor DOUGLAS.

VICTORIA, VANCOUVER'S ISLAND.

SIR: I am directed by his excellency the governor to acknowledge the receipt of your letter of the 6th instant, requesting his excellency's attention to the case of certain American citizens now in prison at this place on various charges, and who are deprived of the benefit of counsel, for the reason that no member of the American bar is permitted to practice in the courts of Vancouver's Island; and further desiring that his excellency will so far interpose to promote the ends of justice as to cause counsel to be assigned to the accused from among the members of the American bar resident in Victoria, and to provide that a similar course be taken in all such cases hereafter.

I am also directed by his excellency to assure you of his desire to take into favorable consideration the proposition in your letter; and at the same time, while admitting the hardship of the cases referred to, to state his opinion that the constitutional law of England does not invest him as governor with authority to alter or suspend the established rules of the law courts of the colony.

As this, however, is a question of great public importance, his excellency will submit it for the consideration of the law officers of the colony, and will communicate to Mr. Nugent their decision as soon as received.

I have the honor to be, sir, your obedient servant,

RICHARD GOLLEDGE,
Secretary.

JOHN NUGENT, Esq.,
Special Agent of the United States, &c., &c., &c.

GOVERNMENT HOUSE, VICTORIA,
Vancouver's Island, October 14, 1858.

SIR: With reference to the communication which I had the honor of addressing you by his excellency's instructions on the 8th instant, I am directed by the governor to transmit for your information copy of a communication received from the crown solicitor of Vancouver's Island, showing that, in his opinion, no power is vested in the executive to cause counsel from among the members of the American bar resident in Victoria to be assigned to parties accused of offences and awaiting trial in the courts of Vancouver's Island.

The governor further desires me to state to you that the courts have no objection whatever to allow persons in custody to receive assistance from members of the American bar, or others who may be willing to aid them in preparing for their defence.

I have the honor to be, sir, your obedient servant,
RICHARD GOLLEDGE,
Secretary.

JOHN NUGENT, Esq.,
Special Agent for the United States.

Copy of a letter from George Pearkes, esq., crown solicitor and attorney, to Governor Douglas, dated Saturday morning, October 10, 1858.

SIR: The undersigned has the honor to acknowledge the receipt of your communication of the 8th instant, accompanied by a communication of Mr. Nugent, special agent of the United States.

To the question propounded by your excellency as to the constitutional power of the executive to cause counsel from among the members of the American bar resident at Victoria to persons accused of crime and awaiting trial in the courts of this colony, it is submitted:

First. The organization of the judiciary is separate and distinct from that of the executive; and the appointment of any officer to discharge functions pertaining to the judiciary not specified by law would be an encroachment on the part of the executive.

Second. Barristers, attorneys, and solicitors, are made by law officers of the judiciary, having rights and privileges incident to such office, and amenable and punishable for misconduct after call and during enrollment.

Third. By act of parliament and order in council organizing the judiciary of this colony it is expressly provided that the chief justice shall make rules for the admission of barristers, attorneys, and solicitors to practice in the respective courts of this colony.

The order referred to gives no authority, even to the judiciary, to make assignment of counsel to the members of the bar of a foreign State, but expressly prohibits the appearance of any other person to act in that capacity, save those so enumerated.

Until recently, prisoners charged with felony were not allowed to make their defence by counsel, and this not until the 6th and 7th of

William the Fourth, when by special statute they were permitted counsel learned in the law, or by attorneys in the courts where attorneys practice as counsel.

It therefore follows that no power to assign counsel is vested in the executive.

I have the honor to be your excellency's obedient servant,

GEORGE PEARKES,
Crown Solicitor and Attorney.

HOTEL DE FRANCE,
Victoria, Vancouver's Island, November 3, 1858.

SIR: Indisposition and absence from town have caused your note of the 14th ultimo to remain unanswered until now.

I am therein advised that your excellency finds it impossible to interpose, in accordance with the request contained in my note of the 6th ultimo, to cause counsel to be assigned from among the American members of the bar, resident in the colony, to American citizens accused of crime, in the absence of British subjects authorized to practice in the colonial courts. A former note had assured me of your disposition to accord to the request your most favorable consideration. That the subject would receive such favorable consideration I had every reason to expect. The plain dictates of humanity and justice should forbid that the lives and liberties of people of any nationality should be jeoparded, simply out of deference to the forms of a crude forensic etiquette. Still more was I justified in hoping that these forms would be set aside, when their observance would operate most harshly and unjustly against citizens of a power on terms of peace and amity with the nation whose government you serve, and at a time when the bonds of friendship which happily subsist between the two countries are being strengthened and drawn closer day by day.

I need not say that I am greatly disappointed at the conclusion at which your excellency has arrived. The consequence of that conclusion will be that American citizens accused of crime in these colonies will be, as some have already been, forced to trial without benefit of counsel, ignorant as they may be of the law, unadvised as to their rights, unacquainted with the rules of evidence or the regulations of the courts, and denied all those facilities for proving their innocence that in every well regulated government are afforded to those unfortunates who find themselves in antagonism to the law. But it is not for its grave injustice, nor for the manifold hardships it will work, that such a course is alone to be deplored. It will naturally prove a pregnant and oft-recurring source of irritation and ill feeling to the Americans residing in these colonies. It will force them to contrast the treatment of their countrymen here with the treatment of British subjects in the United States. They know that there, no foreigner, however friendless or lowly he may be, how atrocious soever the crime of which he stands accused, is put upon his trial without counsel to represent him; and that when he is too poor to command the services of the

bar, the court takes merciful cognizance of his condition and assigns counsel for his defence. It is needless to say that a comparison so little to the advantage of British colonial justice and its administration will have a tendency to defeat what I am not permitted to doubt is the wish of the British government, as it is that of the government of the United States, to promote and foster feelings of cordial good will between American citizens sojourning in these colonies and the subjects of her Britannic Majesty.

I regret that your excellency should have taxed the legal erudition of the crown solicitor in reference to what is, after all a matter of simple justice. It needed not that functionary's learned opinion to prove that the judiciary should be independent of the executive. But in a colony where, if I may without invidiousness say so, there is observable so extraordinary a confusion of jurisdictions, in its fiscal, executive and judicial departments, and where there have been so many departures from law, involving a most material sacrifice of the rights of American citizens, it was not unreasonable to indulge the hope that your excellency, to prevent great wrong and injustice, and for the conservation of harmony and kind feeling, would have favored not a violation of law, but an immaterial deviation from the rules of an imperfectly organized court.

Disappointed in this hope, I have but to request that your excellency will afford me facilities for obtaining the names of those American citizens accused of crime in the colonies of Vancouver's Island and British Columbia, within the last six months, who have been forced to trial without counsel to represent them, and have been convicted, that I may be enabled to present their case to the government of the United States for its action.

I have the honor to be your excellency's obedient servant,

JOHN NUGENT,
Special Agent of the United States.

His Excellency Governor DOUGLAS.

P. S.—The last two notes received from your excellency were signed by your secretary, I presume, through inadvertence. I beg to call your attention to this mistake, in order to prevent its recurrence.

VICTORIA, VANCOUVER'S ISLAND,
November 9, 1858.

SIR: I am desired by his excellency the governor to acknowledge the receipt of your letter of the 3d instant, and to express his regret at your late indisposition and his sincere hope that your health is now restored.

His excellency wishes to impress upon you that, with every wish to accommodate American citizens resident in this colony and in British Columbia, and to extend to them every privilege consistent with British law, as is proved by the very liberal treatment which they have hitherto received, he finds himself constrained to adhere to the conclusion already communicated to you respecting the assigning of

counsel from among the American members of the bar resident in the colony to American citizens accused of crime.

If there were no other reasons for limiting the practice in the courts of law to members of the bar who are British subjects, duly qualified for the privilege in conformity with the general custom of all nations, than that the act which established the judiciary of the colony has determined the special classes of lawyers who are competent to practice at the bar, his excellency conceives the question is thereby placed beyond the control of the executive.

For your more particular information upon this point I have the honor to enclose a copy of such of the rules of court as bear upon the subject.

The power to admit persons eligble to practice in terms of these rules is given to the chief justice.

His excellency is convinced that you labor under misapprehension if you suppose, as one portion of your letter would seem to indicate, that the lives and liberties of people of any nationality are put in jeopardy out of deference to what you are pleased to term a crude forensic etiquette; or that American citizens accused of crime in these colonies will be or have already been forced to trial without benefit of counsel and unadvised as to their rights.

As you justly observe, the plain dictates of humanity forbid, and the humane and liberal practice of the courts very carefully prevent, the possibility of any such deplorable consequences.

With the view of satisfying you upon this matter, his excellency would explain: That all persons accused of crimes are tried by jury trial; that the magistrates who are commissioned to preside at such trials are gentlemen well known in the community for the respectability and humanity of their characters, and whose sentences are certainly not tinctured with severity; that on all criminal trials the accused are allowed every reasonable facility for proving their innocence; that they are not only permitted but invited to have professional counsel or private friends of their own selection, without regard to nationality, to advise and assist them before and at their trials; that the only restriction of professional counsel's privileges is that of *pleading;* that this prohibition extends to British subjects equally with the citizens and subjects of all other nationalities, by reason of there not being, at the present moment, legal practitioners in the colonies eligible to practice in the courts—an inconvenience only temporary; and that for the same reason the crown, as prosecutor, is debarred the privilege of counsel to plead against the accused.

You will thus see that American citizens accused of crimes are treated exactly similar to the subjects of her Majesty.

The gravity of those allegations made by you caused his excellency so much concern that, in addition to other investigations to ascertain the truth, he applied to one of the magistrates before spoken of for exact information, and received an answer, of which a copy is enclosed for your information.

His excellency feels confident that on your being informed of this liberal and humane practice of the criminal courts, rendered necessary by the present unlooked-for circumstances of the country as an unavoidable temporary expedient, you will readily perceive and admit

that the contrast which you have drawn between the treatment received by American citizens residing in these colonies and that received by British subjects in the United States is not grounded on facts.

His excellency is constrained to give a positive denial to your allegation made in another part of your letter, that "there have been many departures from law, involving a most material sacrifice of the interests of American citizens."

No such irregularities have occurred, nor is his excellency aware of any such consequences as you assert having accrued from a departure from law in any case; and he is at a loss to conceive to what you can allude by this general assertion.

His excellency is confident that you cannot allude to the effects of decisions of the tribunal in civil cases; for it appears that of the total number of suitors in the "Supreme Court of Civil Justice" during the last few months, a large majority has been American citizens—a conclusive proof that their interests have not been sacrified by "many departures from law," or they would not continue to invoke justice before this tribunal.

In answer to your request that his excellency will afford you facilities for obtaining the names of those American citizens accused of crime in the colonies of Vancouver's Island and British Columbia within the last six months, who have been forced to trial without counsel to represent them, and have been convicted, I am to inform you that it will at all times afford his excellency great pleasure to supply you with all useful information in his power, and to afford you every possible facility for collecting such whenever accessible; but that, as no such cases as those mentioned in the category you have framed have occurred in this or in the sister colony, his excellency finds it impossible to comply with your present request.

On this part of the subject his excellency desires to add that no distinction of nationality has been made in the cases of persons tried for crimes committed against the laws of Great Britain in these colonies, and that all such persons have been fairly and impartially tried, with all the advantages extended to British subjects, and for this reason he fears it would be impossible to ascertain with any accuracy the nationality of all the persons who have been "accused of crime and convicted," and assuredly no return of American citizens "who have been *forced* to trial without counsel, &c.," could be obtained, for the reason that no such cases occurred; a fact of which the details of the criminal practice already herein given will satisfy you.

His excellency desires me to inform you that the two last letters which he had the honor to address to you by his private secretary, alluded to in the postscript to your letter, were not signed by the secretary by inadvertence, as you presume; that the usual medium of official communications is the colonial secretary, and in the absence of that functionary the governor's private secretary was deputed to sign the letters referred to in behalf of his excellency; a course which was not adopted from any disrespect to you, but in conformity with diplomatic usage, and in which sense his excellency begs you will accept

these and any future official communications which he may have the honor of making to you in that manner.

I have the honor to be, sir, your most obedient servant,

RICHARD GOLLEDGE,
Secretary.

Rules of the supreme court of civil justice of the colony of Vancouver's Island, respecting the admission of practitioners.

There shall be enrolled in the court, to practice therein as barristers, such persons only as shall have been admitted as barristers in England or Ireland, or advocates of the court of sessions of Scotland, or to the degree of doctor of civil law at the University of Oxford, Cambridge, or Dublin.

There shall be enrolled in the court, to practice therein as solicitors, such persons only as have been admitted to practice as attorneys or solicitors of any of the courts of record at Westminster or Dublin, or being proctors admitted to practice in any ecclesiastical court in England or Ireland, or being writers to the signet in Scotland.

Nothing contained in any of the rules shall be construed to prevent suitors from appearing and acting for themselves, if they shall so think fit.

Copy of a letter from Augustus Pemberton, Esq., Justice of the Peace, Commissioner of Police, &c., to Governor Douglas.

VICTORIA, VANCOUVER'S ISLAND,
November 8, 1858.

SIR: In reply to your excellency's communication of this morning, referring to certain allegations contained in a letter addressed to you by John Nugent, esq., special agent for the United States of America, in which he requests that your excellency will afford him facilities for obtaining the names of those American citizens accused of crime in the colonies of Vancouver's Island and British Columbia within the last six months, who have been forced to trial without counsel to represent them, and have been convicted, I beg leave to state that I am not aware of any such case, the uniform practice being to allow all criminals, of whatever nation, the assistance of friends and advisers, whether legal or otherwise, to aid them in their defence.

The only instance in which a crown solicitor has been employed to conduct a prosecution in court is that of William Hurley, a colored man, not an American citizen, who was indicted for shooting at George P. Heap, with intent to do some grievous bodily harm. Heap is an American citizen. Hurley was assisted by a Mr. Davis, who was allowed to visit the accused in prison, and to stand by his side in court, to challenge the jury, and to advise what cross-ques-

tions should be put to the witnesses, and what defence should be taken. But as Mr. Davis was not competent to plead in court, the crown solicitor refrained from addressing the jury.

The court which presided on this occasion was held under a special commission issued by your excellency to three justices of the peace, of whom I was one.

For my own part, I most solemnly declare that I make no distinction, nor any inquiry, as to the nationality of persons charged with committing offences against the laws. I deal with each case according to its own peculiar merits; and the maintenance of peace and order during a time of great excitement has been a subject of congratulation; in proof of which I take the following extract from the "Victoria Gazette," November 2, 1858, the editor of which is an American:

"The order that has been maintained here, under circumstances of grave forebodings, aggravated by the numerical weakness of those directly pledged to sustain the law, cannot but have a decided tendency to inspire that confidence upon which is dependent the character of our future population."

I have the honor to remain your excellency's most obedient humble servant,

AUGUSTUS PEMBERTON, *J. P.*

His Excellency JAMES DOUGLAS, Esq.,
Governor of Vancouver's Island and British Columbia.

NOTE.—I would remark that the facts here denied are notorious to everybody in Victoria. While Governor Douglas was still holding my application under advisement, the men were put upon their trial, convicted, with one exception, and sentenced, some of them to transportation, notwithstanding that Mr. Labatt, an American citizen, arose in court and requested a postponement of the trials even for a day until the will of the governor could be known. What Governor Douglas dwells upon as an act of liberality, permitting counsel or friends to confer with the accused in prison, was simply their legal right; but the truth is, they did not enjoy even this right. They had no legal advice whatever.

JOHN NUGENT.

Mr. Nugent to Governor Douglas.

HOTEL DE FRANCE, VICTORIA,
Vancouver's Island, November 12, 1858.

SIR: In my note of third of the present month, I had the honor to call your attention to what I conceived to be a mistake made by your secretary in signing your two communications of the 8th and 13th ultimo, respectively, with his own name. In a verbal conversation had with your excellency on the day on which your last note was dated, I intimated that I could not receive communications on matters connected with my agency through the medium of your private secretary, that gentleman being to me officially unknown. Since then, I have received another note dated November 9, 1858, doubtless dictated by your excellency, but signed in the same way as the two preceding.

Not having been made aware by my government of any circumstance giving your excellency the prerogative of corresponding with me at second hand, and only through a third party, I regret to inform you that I cannot take notice of the contents of your communication of the 9th instant; and further, that all written correspondence must cease between us with this note. I am urged to this step by a sense of duty alone; and although I would be undoubtedly justified by the rules of that diplomatic etiquette to which you appeal, in returning your last communication, I refrain from so doing, because it is my desire to avoid all appearance of harshness or unkindness; because I am willing to attribute your excellency's course to a want of conversancy with such matters, rather than to uncivil intention; and because, in obedience to the spirit of my instructions, I am anxious to maintain, to the end, the amicable relations that have hitherto subsisted between your excellency and myself.

Lest my official duties should not afford me leisure to call for the purpose of paying my respects to your excellency previous to my departure, I avail myself of this occasion to bid you farewell.

I have the honor to be your obedient servant,

JOHN NUGENT,
Special Agent of the United States.

His Excellency Governor DOUGLAS.

SAN FRANCISCO, *December* 22, 1858.

SIR: Enclosed please find copy of a letter addressed to us by Captain W. L. Dall, which furnishes statement of the number of passengers transported from Victoria to San Francisco, by your request.

We trust you may succeed in getting a bill through Congress which will remunerate the company for the service.

We are, respectfully,

FORBES & BABCOCK, *Agents.*

Hon. JOHN NUGENT,
United States Commissioner, &c., &c., Washington.

SAN FRANCISCO, *December* 22, 1858.

GENTLEMEN: The Hon. John Nugent, United States Commissioner to British Columbia, went passenger with me from San Francisco to Victoria, and on the passage up suggested that he might find some Americans in destitute circumstances, wishing to return to their homes in the United States, and desired permission to furnish passage to such as were destitute, that they might be able to reach San Francisco; at the same time he wished it understood that he had no authority from the federal government to make any contract for transportation, but promised he would notify the State Department of what had been done by the Pacific Mail Steamship Company in the way of transportation, and exert his influence to have the service properly paid for.

As I had your consent to make some arrangement of this kind, I

told him his written request to our agent at Victoria, or myself, would entitle the bearer to a steerage passage. Neither Mr. Nugent or myself ever supposed there would be occasion to extend this privilege to many.

The Northerner, in October, brought down ten passengers, and the Panama, November 2, seventy-four, and Panama, November 22, forty-one, making in all one hundred and twenty-five passengers furnished transportation, which, at twenty dollars each, the usual price, amounts to twenty-five hundred dollars.

The persons thus relieved were in very destitute circumstances, and, really, had not some way been found to enable them to return to their homes, I do not know where they would have found food or shelter.

Yours, respectfully,

WILLIAM L. DALL.

Messrs. FORBES & BABCOCK,
Agents Pacific Mail Steamship Company.

I certify that the number of passengers above mentioned, one hundred and twenty-five, were brought down from Victoria to San Francisco, free of charge, on board the Pacific Mail Steamship Company's steamers, at my request; and that the usual rate of steerage passage, during October and November, 1858, was twenty dollars.

JNO. NUGENT,
Special Agent of the United States.

WASHINGTON, D. C., *January* 24, 1858.